

STATE OF MICHIGAN
COURT OF CLAIMS

DAN RYAN, PAUL DRISCOLL, JOELLEN M.
PISARCZYK, and MYRON ZOLKEWSKY.

Plaintiffs,

OPINION AND ORDER REGARDING
THEGATEWAYPUNDIT.COM'S
MOTION TO INTERVENE

v

Case No. 20-000198-MZ

JOCELYN BENSON,

Hon. Christopher M. Murray

Defendants.

_____ /

Plaintiffs' verified complaint alleges that defendant failed to exercise her duty to regulate the conduct of the 2020 general election by failing to prohibit partisan interest groups from funneling grant money to certain local jurisdictions. In particular, plaintiffs allege that a private organization with a partisan agenda, the Center for Tech and Civic Life (CTCL), awarded grants to a select group of Michigan election jurisdictions in an effort to influence the outcome of the November 3, 2020 general election. The complaint alleges that these private funds have been used to pay for printing and distributing absentee ballots and for ballot drop-boxes. The ballot boxes allegedly secured by this funding do not, according to plaintiffs, comply with the requirements mandated by this state's election law.

Plaintiffs ask the Court to declare that defendant violated Const 1963, art 2, § 4's "purity of elections" clause, as well as Const 1963, art 1, § 2 (equal protection), by allowing certain jurisdictions to accept private funds for use in the upcoming general election. Meanwhile, other jurisdictions that have not received grant funding must rely on taxpayer funding to conduct the

election. Plaintiffs also allege a violation of this state’s election law with respect to what they contend are improper absentee ballot boxes. Further, citing media reports, the complaint alleges that the CTCL sent money to the City of Lansing and the City of East Lansing, which those cities used to send absent voter ballot applications to voters. Plaintiffs ask that the Court enjoin defendant from allowing local jurisdictions to accept private funds from groups such as CTCL. Finally, plaintiffs ask the Court to issue a writ of mandamus compelling defendant to “require all contributions of private funds received by local election jurisdictions to be returned to the donor,” or to have these purportedly illegal funds distributed on an “equal basis to all election jurisdictions in Michigan on a pro rata basis by the number of registered voters in each jurisdiction.”

This Court initially denied any preliminary injunctive relief, setting forth several reasons for doing so. But, the Court concluded that the allegations warranted further discovery and litigation, and because of the timing of the election, would not likely be moot after the election. A scheduling order was issued this month.

Now a media entity, Thegatewaypundit.com (TGP), seeks to intervene. Intervention can be by right, or by permission. See MCR 2.209(A) and (B). TGP asserts that it qualifies for both intervention of right, and permissive intervention. TGP is incorrect.

Intervention under MCR 2.209(A) occurs when a person claims an interest in the property or transaction that is the subject of the lawsuit, and without intervention that person’s interests would be impaired or impeded. As noted, this lawsuit concerns whether the Secretary of State has allowed illegal contributions from private sources to be used by local entities for election purposes. That is a matter of state election law. It has nothing to do with who won the 2020 presidential

election in Michigan, which appears to be TGP's (and its readers¹) main concern. Indeed, TGP mentions in its motion that the current plaintiffs have "not declared a party affiliation," and TGP's affiliation (to the extent a corporation can have one) is with President Trump. Unlike in the political fields, party affiliation means nothing in a court of law. It matters not whether a resident of, say, Oakland County, voted for President Trump, Joseph Biden, or a third-party candidate (or, frankly, no one at all). The drop-boxes that are at issue could be used by any voters in a particular area, not just those aligned with, or voting for, a particular party or candidate. And, more importantly, whether the usage of grant monies for these purposes was violative of Michigan law is a legal question, not a partisan or political one.

Additionally, there is nothing to suggest that the current plaintiffs and their counsel cannot adequately represent the interests of TGP when it comes to the legality of defendant's actions. After all, it was these plaintiffs that first brought the issue to the Court, and their counsel is an experienced election law attorney. TGP's interests on the issues presented in the complaint will no doubt be adequately represented.

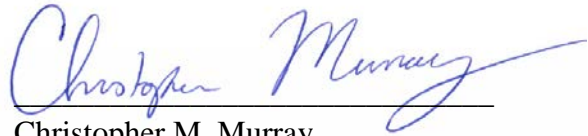
Finally, from TGP's statements in its brief, the Court is concerned that allowing intervention will allow additional issues, not set forth in the complaint, to be raised. For example, in the motion to intervene TGP makes serious allegations against both Attorney General Dana Nessel (who is not a party to this case) and Mark Zuckerberg (also not a party in this case). Whether those two individuals have done anything to legally harm TGP is irrelevant to the issues

¹ Though it is of no relevance, the Court notes that no affidavits of any TGP readers have been submitted, so there is no factual support for how many readers TGP has, or what their collective views are regarding the presidential election or how the legality of what is being challenged.

in this case, and are better left to another lawsuit. See *Precision Pipe & Supply, Inc v Meram Constr, Inc*, 195 Mich App 153, 157; 489 NW2d 166 (1992) (“[I]ntervention may not be proper where it will have the effect of . . . producing a multifariousness of parties and causes of action.”).

For these reasons, proposed intervenor TGP’s motion to intervene is DENIED. The motion for temporary admission to practice on behalf of John C. Burns is DISMISSED as moot.

Date: December 14, 2020



Christopher M. Murray
Judge, Court of Claims